

Memorandum 98-34

Uniform TOD Security Registration Act: Comments on Tentative Recommendation

Attached is the one letter of comment we received on the tentative recommendation on the Uniform TOD Security Registration Act, together with a staff draft of a final recommendation:

Exhibit pp.

1. State Bar Estate Planning, Trust and Probate Law Section 1-4

The uniform act allows an owner of securities to register title in transfer-on-death (TOD) form and to designate a death beneficiary in the instrument. TOD registration gives an owner of securities who wants to make a nonprobate transfer at death an alternative to the frequently troublesome joint tenancy form of title. It is consistent with existing California law, which authorizes provisions for nonprobate transfer on death in a variety of written instruments, including a certificated or uncertificated security. Prob. Code § 5000.

The uniform act is an issuer protection measure. It authorizes, but does not require, issuers to offer the TOD title form, but it is “sufficiently protective to attract their attention.” The primary purpose of the uniform act is “to induce a dominant segment of the world of financial intermediation to lead investors away from joint and survivor title forms.” Wellman, *Transfer-on Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 835, 838 (1987). The act was developed with the cooperation of the mutual fund and stock transfer industries.

The uniform act has been enacted in 39 states, including Pennsylvania, New Jersey, Ohio, and Illinois. A bill to enact the uniform act in California, AB 1683 (Kuykendall), passed the Assembly on consent, and is set for hearing in the Senate Judiciary Committee on Tuesday, June 9.

GENERAL COMMENT

The State Bar Probate Section says the uniform act “should be adopted” and will “bring securities brokerages into the same standing as financial institutions.”

COMMENTS ON SECTIONS IN STAFF DRAFT

§ 5502. Ownership requirement to obtain registration in beneficiary form

Section 5502 says “[o]nly individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form.” The State Bar Probate Section says this provision is too restrictive, and should be revised or omitted. The Comment explains the reason for the restrictiveness of this provision:

Tenancy in common and community property otherwise than in a survivorship setting are negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries for each individual’s fractional interest in a co-owned security normally will split their holdings into separate registrations of the number of units previously constituting their fractional share. Once divided, each can name his or her own choice of death beneficiary.

To encourage issuers and brokerages to offer the title form provided by the uniform act, it must be reasonably simple and easy to administer. The staff believes that to permit co-owners to hold as tenants in common would create problems for issuers, because on the death of one tenant in common, the heirs or devisees of the deceased cotenant would have a claim to the shares. **To avoid this, the staff believes it is better to adhere to the uniform act requirement of a right of survivorship between co-owners, subject to community property rights of a nonconsenting spouse as provided in Section 5507.5.**

§ 5507.5. Community property rights of nonconsenting spouse; effect of dissolution of marriage

Section 5507.5 says the act “is subject to Chapter 2 (commencing with Section 5010) of Part 1,” which sets out rights in community property subject to a nonprobate transfer. This language is not found in the uniform act, and it differs from the parallel provision in AB 1683 (Kuykendall), which says instead that nothing in the act “alters the community character of community property or community rights in the community property.” In the Tentative Recommendation, the staff asked for comment on which of these is better. The State Bar Probate Section expressed a preference for the more specific language of the Commission’s draft. **We might combine these two versions as follows:**

Nothing in this part alters the community character of community property or community rights in the community property. This part is subject to Chapter 2 (commencing with Section 5010) of Part 1.

The State Bar Probate Section asks whether some Probate Code provisions should be expressly excluded from applying under the uniform act, such as the omitted spouse provisions of Section 21610. Section 21610 says that “if a decedent fails to provide in a testamentary instrument for the decedent’s surviving spouse who married the decedent after the execution of all of the decedent’s testamentary instruments, the omitted spouse shall receive” all the community property and an intestate share of decedent’s separate property. “Testamentary instruments” is defined to mean the decedent’s will or revocable trust. This definition makes clear Section 21610 does not apply to property taken other than by will or trust, such as by a statutory right arising under the uniform act. **The staff believes this is sufficient.**

§ 5508. Protection of registering entity

Section 5508 says a

registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 5507 and does so in good faith reliance (1) on the registration, (2) on this part, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary’s representatives, or other information available to the registering entity.

The State Bar Probate Section suggests we replace this provision with the protections in Probate Code Sections 5401-5407 for financial institutions accepting deposits in multiple-party accounts. **The staff recommends against this suggestion.** Probate Code Sections 5401-5407 are tailored to the particular forms of deposit accounts in financial institutions. See Prob. Code §§ 5401 (multiple-party accounts), 5402 (payment of joint account), 5403 (payment of P.O.D. account), 5404 (payment of Totten trust account). It would require substantial redrafting of these provisions to make them applicable to securities issuers and brokerage houses, and the benefit of so doing is not obvious. The staff would keep the uniform act provision as quoted above.

§ 5510. Terms, conditions, and forms for registration

The State Bar Probate Section suggests we ensure the terms “LDPS” and “lineal descendants per stirpes” are consistent with Probate Code Sections 240-247. Section 246 says that, if an instrument distributes property “per stirpes,”

the property to be distributed shall be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave children then living. Each living child of the ancestor is allocated one share, and the share of each deceased child who leaves issue then living is divided in the same manner.

To make this clear, the staff would add the following to the Comment to Section 5510: “For distributions to lineal descendants per stirpes, see Section 246.”

Section 5510 permits registering entities to establish terms and conditions under which they will receive and implement requests for registrations in beneficiary form, including requests for cancellation of previously registered designations or for reregistration to change a beneficiary. The State Bar Probate Section is concerned about the multiplicity of terms and conditions that will result under this provision, and recommends the provision be limited. The staff discussed this with Professor Dick Wellman who helped draft the uniform act. He believes that, while this might have been possible to do when the act was being drafted, we are too far along in the process to do so now.

STAFF RECOMMENDATION

The staff recommends the Commission approve the attached recommendation as revised for printing and submission to the Legislature.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA



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28 May 1998

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Re: Comments on Uniform TOD Registration Act

Dear Bob:

Warren has asked us to provide to your directly our comments on the above-referenced Act and section 5507.5, in particular. Please know that although our comments are based upon a less than thorough review (due to time restrictions) but are intended to point out some thematic issues if not inconsistencies between the Act and the present Probate Code. Our comments may well be more than you have asked for, but we hope the comments are both useful and timely toward your consideration of the Act and section 5507.5.

- a) General Purpose of the Act. No comments were received which reflected a negative reaction to the purpose and intent of the Act. Each of us acknowledged the consistency, in theory, of the Act with such accounts for financial institutions (under §5300 *et. seq.*). The Act should be adopted and should serve a long overdue need to bring securities brokerages into the same standing as financial institutions.
- b) General Drafting Comments. Before launching into specifics points, it is important to note that the Act borrows much of its language and drafting style from the uniform code (as adopted in other states). If left in its present form the

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Act presents certain inconsistencies with existing Probate Code sections.
Examples of these are:

- i) Probate Code §§240, 245, 246 and 21110. The Act introduces somewhat new terms such as "LDPS" (§5510 of the Act) for identifying distribution to lineal descendants per stirpes; and, does so without direct or indirect reference to Probate Code §§ 240, 245, 246 or 21110. Without more time for review, one could assume that inconsistencies are possible in the disposition of such an account without the benefit of tying together the Act with these Code sections.
- ii) Protection for Financial/Brokerage Institutions. §5508 of the Act addresses protections for the benefit of the registering entity. The Probate Code devotes a whole chapter (5400 *et. seq.*) to such protections. Chapter 5400 may be better (or worse) than §5508 of the Act, but the preference would be to revise Chapter 5400 to incorporate the Act provisions as needed to address particulars of Brokerage Institutions, thereby avoiding multiple standards of protection in the Code.
- c) Specific Drafting Comments. The following items have been identified as potential problems of the Act as drafted:
 - i) Multi-party Accounts. This area of the Act is most troubling. The Act relies heavily on uniform code language by limiting the definition of multi-party accounts to forms that incorporate survivorship rights (§ 5502 of the Act). This provision of the Act precludes accounts established in co-tenancy (and, by implication, in community property), unless such ownership has survivorship rights (see comment to § 5502 of the Act). This is completely impossible under present law since California has yet to adopt a community- survivorship form of transfer. It would seem that under the Act no form of multi-party account ownership other than joint tenancy is possible in California. This raises certain concerns regarding presumptions of community property over joint tenancy accounts under Family Law Code rules of interpretation. In short, this provision of the Act seems to make little sense or impact under present California law. Perhaps when and if the legislature adopts community property with rights of survivorship, this provision of the Act will have utility; until then, this provision ought to be

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revised or omitted.

- ii) § 5507.5 - Community Property Rights of Nonconsenting Spouse. Positive comments were received regarding your direct reference requirement to Probate Code §5010 *et. seq.*, under this section, as well as to new Chapter 5600 regarding the effect of dissolution of marriage on non-probate transfers. This approach is consistent with the above-mentioned comments of weaving the Act into other relevant and effected Probate Code sections. However, one thought was raised as to whether other sections or chapters should be expressly *excluded* e.g., omitted spouse provisions under §21610?
- iii) § 5510 - Dispute Resolution. The Act places heavy reliance upon the form and conditions established by the entity to resolve problems concerning fractional shares, forms of TOD designations, modification of accounts, etc. It is reasonable to assume that no standard will be established but rather a "fine print" approach adopted by each and every entity establishing such accounts. This may be a trap for the unwary public not trained to know the subtle distinctions of present and future ownership rules. While it may be reasonable for each entity to establish rules of identifying present owners of such accounts and procedures for maintaining them, it may be arbitrary to also allow such entities to make determinations of other rights and benefits under such account without any reference to the probate or civil codes. It is our recommendation that this provision be limited in scope.
- iv) Change, Modification, Alteration of Accounts. Related to the problems discussed above under §5510 of the Act, the Act is silent as to how one changes, modifies or alters an established account. §5506 of the Act states that the owner may change or cancel the account at any time. How such change or cancellation is acknowledged presumably falls under the terms and conditions of the form adopted by each entity (see §5510). For example, could an entity allow for alteration by reference made in the decedent's will or other non-account written declaration? What if some entities permit such modification and others do not? See Probate Code § 5303 which provides uniform rules for such issues relating to financial institutions. While we may not like the way § 5503 limits the decedent's ability to alter such an account, there is

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something to be said for consistency in application of such rules.
The Act simply does not adequately address these issues.

It appears that the Act enjoys broad based support and should be adopted. Our concern is largely with its interaction with the Probate and other Codes. The goal here to achieve uniformity within the Probate Code by avoiding the uniform code language (sorry no pun intended) used throughout the Act.

Very truly yours,

Paul J. Barulich
Diana Hastings Temple
Barry C. Fitzpatrick

PJB:hs

File No.: Excom

cc: Warren A. Sinsheimer, Chair
Robert Temmerman
Jim Deeringer

#L-3023

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Uniform TOD Security Registration Act

June 1998

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

This recommendation proposes the enactment of the Uniform TOD Security Registration Act. This uniform act allows the owner of securities to register the title in transfer-on-death form.

This recommendation was prepared pursuant to Resolution Chapter 102 of the Statutes of 1997.

UNIFORM TOD SECURITY REGISTRATION ACT

The Law Revision Commission recommends that the Uniform TOD Security Registration Act¹ be enacted in California. This uniform act allows an owner of securities to register the title in transfer-on-death (TOD) form and to designate a death beneficiary in the instrument.² The uniform act enables an issuer, transfer agent, broker, or other intermediary to transfer securities on the owner's death directly to the designated TOD transferee. The uniform act has been enacted in 39 states.³

TOD registration is consistent with existing California law, which authorizes provisions for nonprobate transfer on death in a wide variety of written instruments, including a certificated or uncertificated security.⁴ It is also consistent with long-standing and well-established California policy favoring nonprobate transfers at death for bank deposits,⁵ certain state-registered vehicles and vessels,⁶ individual retirement accounts, pension plans, and other assets.⁷ The uniform act

1. The Uniform TOD Security Registration Act was approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws in 1989. The act was approved as an addition to the Uniform Probate Code as part of a revised Article VI (nonprobate transfers) and as a separate free-standing act.

2. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (so-called "street accounts") are also covered by the uniform act.

3. The 39 states that have enacted the Uniform TOD Security Registration Act are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri (substantially similar), Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

4. Prob. Code § 5000; 1 B. Ross & H. Moore, California Practice Guide Probate § 2:175-2:178.5, at 2-93 to 2-98 (Rutter Group, rev. 1994); see also Estate of Petersen, 28 Cal. App. 4th 1742, 1751-53, 34 Cal. Rptr. 2d 449, 456-58 (1994) (annuity contracts). Probate Code Section 5000 provides that a "provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account, agreement, custodial agreement, deposit agreement, compensation plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument." Probate Code Section 5003 gives immunity to a holder of property described in Section 5000 who transfers it in compliance with the provision for nonprobate transfer. Sections 5000 and 5003, therefore, may already validate a TOD designation in securities. See Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 807-811 (1987). Section 5000 is the same in substance as Section 6-101 of the Uniform Probate Code (1993). The Uniform TOD Security Registration Act extends the nonprobate transfer provision in Uniform Probate Code Section 6-101. *Id.* at 794. Professor Wellman concluded that, for securities, "TOD registration probably will not become a widely used new title form without legislative authorization" such as the Uniform TOD Security Registration Act. *Id.* at 836.

5. Prob. Code §§ 5100-5407.

6. Health & Safety Code §§ 18080.2, 18102.2, 18102.3 (manufactured home, mobilehome, commercial coach, truck camper, floating home); Veh. Code §§ 4150.7, 5910.5, 5910.7 (motor vehicle); Veh. Code § 9852.7, 9916.5, 9916.7 (undocumented vessel).

7. See also Educ. Code §§ 23300, 23811 (teachers' death benefits); Gov't Code §§ 21455-21458 (public employees' death benefits); 31 C.F.R. § 315.79(c) (U.S. savings bond in beneficiary form).

fleshes out the existing California authority for nonprobate transfer of certificated or uncertificated securities by giving specific authority to issuing entities to register securities in TOD form. It is an issuer protection measure that authorizes, but does not require, issuers to offer the TOD title form.⁸

TOD registration is designed to give an owner of securities who wants to arrange for a nonprobate transfer at death an alternative to the frequently troublesome joint tenancy form of title. Because joint tenancy registration of securities normally entails a sharing of lifetime entitlement and control, it works satisfactorily only as long as the co-owners cooperate. Difficulties arise when the co-owners fall into disagreement or when a co-owner becomes unable to manage his or her affairs or becomes insolvent. Joint tenancy registration to arrange for a nonprobate transfer at death may also create estate planning problems⁹ and may have undesired tax consequences.¹⁰

Use of the TOD registration form encouraged by the uniform act has no effect on the registered owner's full control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred or whenever the owner otherwise complies with issuer's conditions for changing the title form of the investment. The uniform act recognizes that co-owners with a right of survivorship may be registered as owners together with a TOD beneficiary designated to take if the registration remains unchanged until the beneficiary survives the joint owners. In such a case, the survivor of the joint owners has full control of the asset and may change the registration form as the survivor sees fit after the other's death.

The proposed law is subject to other provisions of California law to the same extent as most other forms of nonprobate transfer: It does not limit rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.¹¹ It does not deprive a married decedent of the right to dispose

8. The uniform act is sufficiently protective of issuers to attract their attention. Its primary purpose is "to induce a dominant segment of the world of financial intermediation to lead investors away from the joint and survivor title forms." Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 835, 838 (1987). Implementation of the uniform act is wholly optional with issuers. The drafting committee that prepared the uniform act received advice and assistance from representatives of the mutual fund and stock transfer industries during its three years of preparatory work. Thus the uniform act takes full account of practical requirements for efficient transfer within the securities industry.

9. If the owner of a security takes title in joint tenancy with a nonowner, there is a present transfer of a share of the owner's interest. This transfer may create problems for the estate planner who is consulted after the security has been registered in joint tenancy. The estate planner has more flexibility if a TOD beneficiary is designated, since the TOD beneficiary designation can easily be changed.

10. The TOD beneficiary may have a more favorable basis for income tax purposes, since there is no transfer to the TOD beneficiary until the death of the owner of the security. In addition, creation of a joint tenancy may create a gift tax liability at the time the interest is created.

11. This provision is the same as California Probate Code Section 5000(c) (nonprobate transfer in written instrument) and Section 9(b) of the Uniform TOD Security Registration Act (1989).

by will of his or her half interest in a community property security.¹² A TOD designation in a security by a married person naming his or her spouse as beneficiary will be revoked by dissolution of their marriage.¹³ The proposed law is subject to provisions relating to simultaneous death,¹⁴ effect of homicide,¹⁵ disclaimers,¹⁶ apportionment of estate taxes,¹⁷ and antilapse.¹⁸

12. Prob. Code §§ 5020, 5021.

13. Prob. Code § 5600 (proposed in Commission's Tentative Recommendation on *Effect of Dissolution of Marriage on Nonprobate Transfers* (January 1998)).

14. Prob. Code §§ 220-226.

15. Prob. Code §§ 250-258.

16. Prob. Code §§ 260-288.

17. Prob. Code §§ 20100, 20110.

18. Prob. Code § 21110. Applying the antilapse statute is consistent with the intent of Section 7 of the Uniform TOD Security Registration Act (1989). See Comment to Section 7 of that act.

PROPOSED LEGISLATION

1 **Prob. Code §§ 5500-5511 (added). Uniform TOD Security Registration Act**

2 SECTION 1. Part 3 (commencing with Section 5500) is added to Division 5 of
3 the Probate Code, to read:

4 PART 3 . UNIFORM TOD SECURITY
5 REGISTRATION ACT

6 **§ 5500. Short title; purposes; construction**

7 5500. (a) This part may be cited as the Uniform TOD Security Registration Act.

8 (b) This part shall be liberally construed and applied to promote its underlying
9 purposes and policy (1) to encourage development of a title form for use by
10 individuals that is effective, without probate and estate administration, to transfer
11 property at death in accordance with directions of a deceased owner of a security
12 as included in the title form in which the security is held and (2) to protect issuers
13 offering and implementing the new title form.

14 (d) Unless displaced by the particular provisions of this part, the principles of
15 law and equity supplement its provisions.

16 **Comment.** Section 5500 is the same in substance as Section 11 of the Uniform TOD Security
17 Registration Act (1989). As to construing provisions drawn from uniform acts, see Section 2(b).
18 Paragraphs (1) and (2) of subdivision (b) are not in the uniform act, but are included as a useful
19 statement of the underlying purposes and policy of this part. For a severability provision, see
20 Section 11.

21 **§ 5501. Definitions**

22 5501. In this part:

23 (a) “Beneficiary form” means a registration of a security which indicates the
24 present owner of the security and the intention of the owner regarding the person
25 who will become the owner of the security upon the death of the owner.

26 (b) “Register,” including its derivatives, means to issue a certificate showing the
27 ownership of a certificated security or, in the case of an uncertificated security, to
28 initiate or transfer an account showing ownership of securities.

29 (c) “Registering entity” means a person who originates or transfers a security
30 title by registration, and includes a broker maintaining security accounts for
31 customers and a transfer agent or other person acting for or as an issuer of
32 securities.

33 (d) “Security” means a share, participation, or other interest in property, in a
34 business, or in an obligation of an enterprise or other issuer, and includes a
35 certificated security, an uncertificated security, and a security account.

36 (e) “Security account” means (1) a reinvestment account associated with a
37 security, a securities account with a broker, a cash balance in a brokerage account,
38 cash, interest, earnings, or dividends earned or declared on a security in an

1 account, a reinvestment account, or a brokerage account, whether or not credited
2 to the account before the owner's death, or (2) a cash balance or other property
3 held for or due to the owner of a security as a replacement for or product of an
4 account security, whether or not credited to the account before the owner's death.

5 **Comment.** Section 5501 is the same as paragraphs (1), (7), (8), (9), and (10) of Section 1 of the
6 Uniform TOD Security Registration Act (1989). Definitions in Section 1 of the Uniform TOD
7 Security Registration Act that are not included here are in other provisions of this code. See
8 Sections 34 ("devisee"), 44 ("heir"), 56 ("person"), 58 ("personal representative"), 62
9 ("property"), 74 ("state").

10 The definition of "security" includes shares of mutual funds and other investment companies.
11 Cf. Com. Code § 8102 (definitions). The defined term "security account" is not intended to
12 include securities held in the name of a bank or similar institution as nominee for the benefit of a
13 trust.

14 "Survive" is not defined. No effort is made in this part to define survival as it is for purposes of
15 intestate succession in Section 6403, which requires survival by an heir of the ancestor for 120
16 hours. For purposes of this part, "survive" is used in its common law sense of outliving another
17 for any time interval, no matter how brief. The drafters of the uniform act sought to avoid
18 imposition of a new and unfamiliar meaning of the term on intermediaries familiar with the
19 meaning of "survive" in joint tenancy registrations.

20 **§ 5502. Ownership requirement to obtain registration in beneficiary form**

21 5502. Only individuals whose registration of a security shows sole ownership by
22 one individual or multiple ownership by two or more with right of survivorship,
23 rather than as tenants in common, may obtain registration in beneficiary form.
24 Multiple owners of a security registered in beneficiary form hold as joint tenants
25 with right of survivorship, as tenants by the entireties, or as owners of community
26 property held in survivorship form, and not as tenants in common.

27 **Comment.** Section 5502 is the same as Section 2 of the Uniform TOD Security Registration
28 Act (1989). Section 5502 is designed to prevent co-owners from designating any death
29 beneficiary other than one who is to take only upon survival of *all* co-owners. It coerces co-
30 owning registrants to signal whether they hold as joint tenants with right of survivorship (JT
31 TEN), as tenants by the entireties (T ENT), or as owners of community property. Also, it imposes
32 survivorship on co-owners holding in a beneficiary form that fails to specify a survivorship form
33 of holding. Nothing in Section 5502 authorizes a California married couple to register a security
34 as "tenants by the entireties," since California does not recognize that form of ownership. See
35 Civ. Code § 682. However, a California corporation may register a security to be held as tenants
36 by the entireties if the shareholders are residents of another state which recognizes that form of
37 ownership. Similarly, California does not permit property to be held as community property with
38 a right of survivorship. However, this title form is recognized in Nevada and Arizona.. See
39 Nevada Rev. Stat. Ann. ch. 111.064 (Michie 1993); Ariz. Rev. Stat. Ann. § 33-431 (Supp. 1997).

40 Tenancy in common and community property otherwise than in a survivorship setting are
41 negated for registration in beneficiary form because persons desiring to signal independent death
42 beneficiaries for each individual's fractional interest in a co-owned security normally will split
43 their holdings into separate registrations of the number of units previously constituting their
44 fractional share. Once divided, each can name his or her own choice of death beneficiary.

45 The term "individual," as used in this section, limits those who may register as owner or co-
46 owner of a security in beneficiary form to natural persons. However, the section does not restrict
47 an individual using this ownership form as to the choice of death beneficiary. The definition of
48 "beneficiary form" in Section 5501 indicates that any "person" may be designated beneficiary in a
49 registration in beneficiary form. "Person" is defined in Section 56 so that a church, trust

1 company, family corporation, or other entity, as well as an individual, may be designated as a
2 beneficiary.

3 **§ 5503. Law authorizing registration in beneficiary form**

4 5503. A security may be registered in beneficiary form if the form is authorized
5 by this or a similar statute of the state of organization of the issuer or registering
6 entity, the location of the registering entity's principal office, the office of its
7 transfer agent or its office making the registration, or by this or a similar statute of
8 the law of the state listed as the owner's address at the time of registration. A
9 registration governed by the law of a jurisdiction in which this or similar
10 legislation is not in force or was not in force when a registration in beneficiary
11 form was made is nevertheless presumed to be valid and authorized as a matter of
12 contract law.

13 **Comment.** Section 5503 is the same as Section 3 of the Uniform TOD Security Registration
14 Act (1989). The section encourages registrations in beneficiary form to be made whenever a state
15 with which either of the parties to a registration has contact has enacted this or a similar statute.
16 Thus, a registration in beneficiary form of X Company shares might rely on the enactment of the
17 uniform act in X Company's state of incorporation, or in the state of incorporation of X
18 Company's transfer agent. Or, an enactment by the state of the issuer's principal office, of the
19 transfer agent's principal office, or of the issuer's office making the registration also would
20 validate the registration. An enactment of the state of the registered owner's address at the time of
21 registration also might be used for validation purposes. The last sentence of Section 5503 is
22 designed to establish a statutory presumption that a general principle of law is available to
23 achieve a result like that made possible by this part.

24 **§ 5504. Origination of registration in beneficiary form**

25 5504. A security, whether evidenced by certificate or account, is registered in
26 beneficiary form when the registration includes a designation of a beneficiary to
27 take the ownership at the death of the owner or the deaths of all multiple owners.

28 **Comment.** Section 5504 is the same as Section 4 of the Uniform TOD Security Registration
29 Act (1989). As noted in the Comment to Section 5502, this part places no restriction on who may
30 be designated beneficiary in a registration in beneficiary form. Any legal entity may be
31 designated beneficiary in a registration in beneficiary form.

32 **§ 5505. Form of registration in beneficiary form**

33 5505. Registration in beneficiary form may be shown by the words "transfer on
34 death" or the abbreviation "TOD," or by the words "pay on death" or the
35 abbreviation "POD," after the name of the registered owner and before the name
36 of a beneficiary.

37 **Comment.** Section 5505 is the same as Section 5 of the Uniform TOD Security Registration
38 Act (1989). The abbreviation "POD" is included for use without regard to whether the subject is a
39 money claim against an issuer, such as its own note or bond for money loaned, or is a claim to
40 securities evidenced by conventional title documentation. The use of "POD" in a registration in
41 beneficiary form of shares in an investment company should not be taken as a signal that the
42 investment is to be sold or redeemed on the owner's death so that the sums realized may be
43 "paid" to the death beneficiary. Rather, only a transfer on death, not a liquidation on death, is
44 indicated. The drafters of the uniform act would have used only the abbreviation "TOD" except
45 for the familiarity, rooted in experience with certificates of deposit and other deposit accounts in

1 banks, with the abbreviation “POD” as signaling a valid nonprobate death benefit or transfer on
2 death.

3 **§ 5506. Effect of registration in beneficiary form**

4 5506. The designation of a TOD beneficiary on a registration in beneficiary form
5 has no effect on ownership until the owner’s death. A registration of a security in
6 beneficiary form may be canceled or changed at any time by the sole owner or all
7 then surviving owners without the consent of the beneficiary.

8 **Comment.** Section 5506 is the same as Section 6 of the Uniform TOD Security Registration
9 Act (1989). The section simply affirms the right of a sole owner, or the right of all multiple
10 owners, to end a TOD beneficiary registration without the assent of the beneficiary. The section
11 says nothing about how a TOD beneficiary designation may be canceled, meaning that the
12 registering entity’s terms and conditions, if any, may be relevant. See Section 5510. If the terms
13 and conditions have nothing on the point, cancellation of a beneficiary designation presumably
14 would be effected by a reregistration showing a different beneficiary or omitting reference to a
15 TOD beneficiary.

16 **§ 5507. Ownership on death of owner**

17 5507. On death of a sole owner or the last to die of all multiple owners,
18 ownership of securities registered in beneficiary form passes to the beneficiary or
19 beneficiaries who survive all owners. On proof of death of all owners and
20 compliance with any applicable requirements of the registering entity, a security
21 registered in beneficiary form may be reregistered in the name of the beneficiary
22 or beneficiaries who survive the death of all owners. Until division of the security
23 after the death of all owners, multiple beneficiaries surviving the death of all
24 owners hold their interests as tenants in common. If no beneficiary survives the
25 death of all owners, the security belongs to the estate of the deceased sole owner or
26 the estate of the last to die of all multiple owners.

27 **Comment.** Section 5507 is the same as Section 7 of the Uniform TOD Security Registration
28 Act (1989). Even though multiple owners of a security registered in beneficiary form hold with
29 right of survivorship, no survivorship rights attend the positions of multiple beneficiaries who
30 become entitled to securities by reason of having survived the sole owner or the last to die of
31 multiple owners. Issuers (and registering entities) who decide to accept registrations in
32 beneficiary form involving more than one primary beneficiary should provide by rule whether
33 fractional shares will be registered in the names of surviving beneficiaries where the number of
34 shares held by the deceased owner does not divide without remnant among the survivors. If
35 fractional shares are not desired, the issuer may wish to provide for sale of odd shares and
36 division of proceeds, for an uneven distribution with the first or last named to receive the odd
37 share, or for other resolution. Section 5508 deals with whether intermediaries have any obligation
38 to offer beneficiary designations of any sort. Section 5510 enables issuers to adopt terms and
39 conditions controlling the details of applications for registrations they decide to accept and
40 procedures for implementing such registrations after an owner’s death.

41 The statement that a security registered in beneficiary form is in the deceased owner’s estate
42 when no beneficiary survives the owner is not intended to prevent application of any antilapse
43 statute that might direct a nonprobate transfer on death to the surviving issue of a beneficiary who
44 failed to survive the owner. See, e.g., Section 21110 (antilapse). Rather, the statement is intended
45 only to indicate that the registering entity involved should transfer or reregister the security as
46 directed by the decedent’s personal representative.

47 See also the Comment to Section 5501 on the meaning of “survive” for purposes of this part.

1 § 5507.5. Community property rights of nonconsenting spouse; effect of dissolution of
2 marriage

3 5507.5. This part is subject to Chapter 2 (commencing with Section 5010) of
4 Part 1 [and to Part 4 (commencing with Section 5600)].

5 **Comment.** Section 5507.5 makes clear that rights granted by this part are subject to Sections
6 5010-5032 (community property rights of nonconsenting spouse in nonprobate transfers) [and
7 5600-5602 (dissolution of marriage revokes all nonprobate transfers to former spouse)].

8 Property rights under this part may be subject to other statutory qualifications than those noted
9 in Section 5507.5. See, e.g., Sections 220-226 (simultaneous death), 250-258 (effect of
10 homicide), 260-288 (disclaimer). Property received under Section 5507 may be subject to
11 apportionment of estate taxes. See Sections 20100-20225. If a TOD beneficiary fails to survive
12 the owner, the beneficiary's interest may be subject to the antilapse statute. See Section 21110.

13 **Note.** The bracketed language, making this part subject "to Part 4 (commencing with
14 Section 5600)," refers to the Commission's Tentative Recommendation on *Effect of*
15 *Dissolution of Marriage on Nonprobate Transfers (January 1998)*, which would provide that
16 dissolution of marriage revokes all nonprobate transfers to a former spouse.

17 § 5508. Protection of registering entity

18 5508. (a) A registering entity is not required to offer or to accept a request for
19 security registration in beneficiary form. If a registration in beneficiary form is
20 offered by a registering entity, the owner requesting registration in beneficiary
21 form assents to the protections given to the registering entity by this part.

22 (b) By accepting a request for registration of a security in beneficiary form, the
23 registering entity agrees that the registration will be implemented on death of the
24 deceased owner as provided in this part.

25 (c) A registering entity is discharged from all claims to a security by the estate,
26 creditors, heirs, or devisees of a deceased owner if it registers a transfer of the
27 security in accordance with Section 5507 and does so in good faith reliance (1) on
28 the registration, (2) on this part, and (3) on information provided to it by affidavit
29 of the personal representative of the deceased owner, or by the surviving
30 beneficiary or by the surviving beneficiary's representatives, or other information
31 available to the registering entity. The protections of this part do not extend to a
32 reregistration or payment made after a registering entity has received written
33 notice from any claimant to any interest in the security objecting to
34 implementation of a registration in beneficiary form. No other notice or other
35 information available to the registering entity affects its right to protection under
36 this part.

37 (d) The protection provided by this part to the registering entity of a security
38 does not affect the rights of beneficiaries in disputes between themselves and other
39 claimants to ownership of the security transferred or its value or proceeds.

40 **Comment.** Section 5508 is the same as Section 8 of the Uniform TOD Security Registration
41 Act (1989), except for substitution of "part" for "act" and "Section 5507" for "Section 7." A
42 "request" for registration in beneficiary form may be in any form chosen by a registering entity.
43 This part does not prescribe a particular form and does not impose record-keeping requirements.

1 Registering entities' business practices, including any industry standards or rules of transfer agent
2 associations, will control.

3 The written notice referred to in subdivision (c) would qualify as a notice under Section 8403
4 of the Uniform Commercial Code.

5 "Good faith" as used in subdivision (c) is intended to mean "honesty in fact and the observance
6 of reasonable commercial standards of fair dealing in the trade," as specified in Section
7 2103(1)(b) of the Uniform Commercial Code.

8 The protections described in this section are designed to meet any questions regarding
9 registering entity protection that may not be foreclosed by issuer protections provided in the
10 Uniform Commercial Code. For a discussion of the relevant Uniform Commercial Code
11 provisions, see Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga.
12 L. Rev. 789, 823 n.90 (1987).

13 **§ 5509. Nontestamentary transfer on death; rights of creditors**

14 5509. (a) A transfer on death resulting from a registration in beneficiary form is
15 effective by reason of the contract regarding the registration between the owner
16 and the registering entity and this part and is not testamentary, and is not invalid
17 because the registration does not comply with the requirements for execution of a
18 will, and this code does not invalidate the registration.

19 (b) This part does not limit the rights of creditors of security owners against
20 beneficiaries and other transferees under other laws of this state.

21 **Comment.** Section 5509 is the same as Section 9 of the Uniform TOD Security Registration
22 Act (1989), with the addition of the last portion of subdivision (a), drawn from Section 5000.

23 **§ 5510. Terms, conditions, and forms for registration**

24 5510. (a) A registering entity offering to accept registrations in beneficiary form
25 may establish the terms and conditions under which it will receive requests (1) for
26 registrations in beneficiary form, and (2) for implementation of registrations in
27 beneficiary form, including requests for cancellation of previously registered TOD
28 beneficiary designations and requests for reregistration to effect a change of
29 beneficiary. The terms and conditions so established may provide for proving
30 death, avoiding or resolving any problems concerning fractional shares,
31 designating primary and contingent beneficiaries, and substituting a named
32 beneficiary's descendants to take in the place of the named beneficiary in the event
33 of the beneficiary's death. Substitution may be indicated by appending to the name
34 of the primary beneficiary the letters LDPS, standing for "lineal descendants per
35 stirpes." This designation substitutes a deceased beneficiary's descendants who
36 survive the owner for a beneficiary who fails to so survive, the descendants to be
37 identified and to share in accordance with the law of the beneficiary's domicile at
38 the owner's death governing inheritance by descendants of an intestate. Other
39 forms of identifying beneficiaries who are to take on one or more contingencies,
40 and rules for providing proofs and assurances needed to satisfy reasonable
41 concerns by registering entities regarding conditions and identities relevant to
42 accurate implementation of registrations in beneficiary form, may be contained in
43 a registering entity's terms and conditions.

1 (b) The following are illustrations of registrations in beneficiary form which a
2 registering entity may authorize:

3 (1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

4 (2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN
5 TOD John S Brown Jr.

6 (3) Multiple owners-primary and secondary (substituted) beneficiaries:

7 John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter
8 Q Brown *or* John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

9 **Comment.** Section 5510 is the same as Section 10 of the Uniform TOD Security Registration
10 Act (1989). Use of “and” or “or” between the names of persons registered as co-owners is
11 unnecessary under this part and should be discouraged. If used, the two words should have the
12 same meaning insofar as concerns a title form, i.e., that of “and” to indicate that both named
13 persons own the asset.

14 Descendants of a named beneficiary who take by virtue of an “LDPS” designation appended to
15 a beneficiary’s name take as TOD beneficiaries rather than as intestate successors. If no
16 descendant of a predeceased primary beneficiary survives the owner, the security passes as part of
17 the owner’s estate as provided in Section 5507.

18 § 5511. Application of part

19 5511. This part applies to registrations of securities in beneficiary form made
20 before, on, or after January 1, 2000, by decedents dying on or after January 1,
21 2000.

22 **Comment.** Section 5511 is the same as Section 11 of the Uniform TOD Security Registration
23 Act (1989), except that it applies this part to registrations made before, “on,” or after the operative
24 date.

CONFIRMING REVISIONS

25 **Com. Code § 8107 (amended). Appropriate person; effectiveness of endorsement, 26 instruction, or entitlement order**

27 8107. (a) “Appropriate person” means any of the following:

28 (1) With respect to an endorsement, the person specified by a security certificate
29 or by an effective special endorsement to be entitled to the security.

30 (2) With respect to an instruction, the registered owner of an uncertificated
31 security.

32 (3) With respect to an entitlement order, the entitlement holder.

33 (4) If the person designated in paragraph (1), (2), or (3) is deceased, the
34 designated person’s successor taking under other law or the designated person’s
35 personal representative acting for the estate of the decedent.

36 (5) If the person designated in paragraph (1), (2), or (3) lacks capacity, the
37 designated person’s guardian, conservator, or other similar representative who has
38 power under other law to transfer the security or financial asset.

39 (6) With respect to an endorsement or an instruction, the beneficiary of a
40 security registered in beneficiary form as defined in subdivision (a) of Section

1 5501 of the Probate Code, if the beneficiary has survived the death of the
2 registered owner or all registered owners.

3 (b) An endorsement, instruction, or entitlement order is effective if it is made by
4 any of the following:

5 (1) It is made by the appropriate person.

6 (2) It is made by a person who has power under the law of agency to transfer the
7 security or financial asset on behalf of the appropriate person, including, in the
8 case of an instruction or entitlement order, a person who has control under
9 paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) of Section
10 8106.

11 (3) The appropriate person has ratified it or is otherwise precluded from
12 asserting its ineffectiveness.

13 (c) An endorsement, instruction, or entitlement order made by a representative is
14 effective even if:

15 (1) The representative has failed to comply with a controlling instrument or with
16 the law of the state having jurisdiction of the representative relationship, including
17 any law requiring the representative to obtain court approval of the transaction.

18 (2) The representative's action in making the endorsement, instruction, or
19 entitlement order or using the proceeds of the transaction is otherwise a breach of
20 duty.

21 (d) If a security is registered in the name of or specially endorsed to a person
22 described as a representative, or if a security account is maintained in the name of
23 a person described as a representative, an endorsement, instruction, or entitlement
24 order made by the person is effective even though the person is no longer serving
25 in the described capacity.

26 (e) Effectiveness of an endorsement, instruction, or entitlement order is
27 determined as of the date the endorsement, instruction, or entitlement order is
28 made, and an endorsement, instruction, or entitlement order does not become
29 ineffective by reason of any later change of circumstances.

30 **Comment.** Section 8107 is amended to add paragraph (6) to subdivision (a). This is a technical
31 amendment to make clear that a TOD beneficiary is an "appropriate person" when the beneficiary
32 has survived the registered sole owner or all the registered owners of a security registered in
33 beneficiary form under the Uniform TOD Security Registration Act (1989). See Prob. Code §§
34 5500-5511. See also Section 8102 ("entitlement order," "financial asset," "endorsement,"
35 "instruction," "security," "security certificate," and "uncertificated security" defined).